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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,334	03/04/2002	Basil Naji	BALDS2.033AUS	4001

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EXAMINER

MARCANTONI, PAUL D

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 04/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/090,334

Applicant(s)

NAJI ET AL.

Examiner

Paul Marcantoni

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 1755

Applicant's arguments filed 4/1/03 have been fully considered but they are not fully persuasive. All earlier rejections under 35 USC 112 as well as prior art rejections have been withdrawn. All prior art has been withdrawn because none of the prior art was determined to teach the specific aluminous material component ii) of independent claims 1 and 15. Also, applicants have specifically pointed out for the record what they mean by the terms alleged to be indefinite so clarification has been set forth and the prior indefiniteness rejections have been withdrawn.

However, the applicants' amendment of their claims and presentation of new claims 14-17 has necessitated the following new grounds of rejection:

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

Claim 1 is indefinite because the following is vague and would appear to be redundant. The expression "a mineral additive including fly ash *and* a component selected from the group consisting of: I) fly ash having a predominant particle size up to 10 microns..." It does not make sense that fly ash is the mineral component and fly ash is another component. How does the fly ash of the mineral component differ than the fly ash of I) having a predominant particle size of up to about 10 microns? What is the particle size of the mineral additive then to distinguish if it is even different? How does one of ordinary skill in the art distinguish between fly ash (mineral additive) and fly ash (of predominant particle size of up to about 10 microns)?

Art Unit: 1755

Claim 5 was listed in the amendment as currently amended and included the term about as an newly added limitation. However, original claim 5 would appear to already contain this term and thus amendment of this claim is not understood. It would appear that no amendment was necessary.

Claim 15 is indefinite because it is unclear how applicants distinguish between “a first portion of fly ash having a predominant particle size of greater than about 10 microns” and a “water reducer which can be (1) a second portion of fly ash having a predominant particle size of up to about 10 microns”. How much fly ash represents the first and how much represents the second portion? How does one distinguish between the first portion of fly ash and the second portion of fly ash since they are identical? Why do applicants not claim one component of fly ash for their entire claim? How does one of ordinary skill in the art distinguish between the first portion of fly ash which is not a water reducer and the second portion of fly ash which is in fact a water reducer and is even present in the same particle size? It is not at all clear what applicants are trying to claim with this redundant language in claims 1 and 15.

The applicants amendment and additon of claims 14-17 necessitated the following grounds of rejection as well:

Claims 15-17 are rejected under the first paragraph of 35 USC 112 and 35 USC 132 as the specification as originally filed does not provide support for the invention as is now claimed.

The range of about "20 to 40%" regarding water reduction would appear to be new matter not supported by the original disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is (703)-308-1196. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on (703) 308-3823. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9310 for regular communications and (703)-872-9311 for After Final communications.

Art Unit: 1755

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.



Paul Marcantoni  
Primary Examiner  
Art Unit 1755